

N.D.A.G. Letter to Naaden (April 19, 1989)

April 19, 1989

Honorable Pete Naaden
District 30
P.O. Box 53
Braddock, ND 58524-0053

Dear Senator Naaden:

Thank you for your April 10, 1989, letter regarding the ability of a board of county commissioners to use county road equipment for private road projects.

A political subdivision, including a county, may only exercise those powers provided by law. N.D. Const. art. XII, § 2. Thus, a county must have specific statutory authority before it may perform non-county roadwork using county equipment.

N.D.C.C. § 11-11-55 provides that a county may agree to make improvements on a private road. That statute states as follows:

11-11-55. County may agree to make improvements on private roads -- Costs of improvements to constitute lien on real estate. The board of county commissioners shall have the power to enter into agreements with private landowners for the purpose of making improvements on private roads. The board shall charge the landowner for the improvements made pursuant to such agreement, and such charges shall constitute a lien upon the real estate of the landowner in the same manner as personal property taxes are made a lien upon real estate as provided in chapter 57-22.

Thus, N.D.C.C. § 11-11-55 allows a county to improve a private road at the owner's expense where there is an agreement between the county and the private road owner.

In determining the charge to the landowner for the improvements made by the county, the provisions of N.D.C.C. § 24-05-04.1 may be applicable. That statute states as follows:

24-05-04.1. County not to lease its equipment for less than cost of operation.--No county, city, or township shall lease, rent, or enter into a contract or agreement for the use of any road construction or maintenance equipment belonging to any county, city, or township on other than county, city, or township roads or projects at a rate which is less than the current equipment rental rates adopted by the North Dakota state highway department as shown in its Standard Specifications for Road and Bridge Construction manual.

There appears to be no other state statutes authorizing a county to use county equipment in making improvements on private roads. Thus, there is no obligation with the county to make such improvements. Only by the terms of an agreement pursuant to N.D.C.C. § 11-11-55 may a county agree to make improvements on a private road.

I hope this information is of assistance to you.

Sincerely,

Nicholas J. Spaeth

ja